

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:BR6

PLR-117340-09

Date:

August 27, 2009

In Re:

LEGEND

Taxpayer =

Parent =

Accounting Firm =

Advisory Firm =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

State A =

Dear :

This responds to your letter dated March 23, 2009, requesting a ruling that grants Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A, "Election To Be Treated as an Interest Charge DISC," (including the shareholder's consent statement) in accordance with Temp. Treas. Reg. § 1.921-1T(b)(1).

The rulings given in this letter are based on facts and representations submitted by Taxpayer and Accounting Firm, and accompanied by penalty of perjury statements. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

FACTS

Taxpayer is a domestic corporation wholly owned by Parent, a closely-held corporation that has elected subchapter S status. Advisory Firm is a financial, tax, and

accounting advisory firm. In Year 1, Advisory Firm advised Parent of the tax advantages associated with interest charge domestic international sales corporations ("DISCs"). Parent's in-house legal department consulted with outside legal counsel to further evaluate this option. Shortly thereafter, Taxpayer was incorporated in State A on Date 1. Parent's legal department prepared all the necessary incorporation paperwork and applied to the Internal Revenue Service for an employer identification number for Taxpayer. From its inception, Taxpayer was intended to be treated as a DISC, and accordingly, Parent has always treated Taxpayer as a DISC for federal income tax purposes.

Although Advisory Firm initially advised Parent on the benefits of a DISC formation, it was not engaged to implement the formation of Taxpayer or provide advice concerning the tax requirements associated with forming a DISC, including the necessity of timely filing a Form 4876-A. Instead, Parent relied on its in-house legal department to handle the formation of the DISC. Through inadvertent error, neither Parent's legal department nor Parent's tax department filed the required Form 4876-A.

Even though Taxpayer had assumed that the necessary requirements to conduct business as a DISC were satisfied, it did not qualify as a DISC for federal income tax purposes because it did not timely file a Form 4876-A with the IRS within 90 days of Date 1. Taxpayer represents that it did not discover this error until Date 2 during initial conversations with Accounting Firm, which had been retained to provide advice on accounting issues with respect to the newly formed DISC.

As a precautionary measure, Taxpayer filed a protective Form 4876-A so that it would be treated as a DISC for its taxable year beginning Date 3 in the event that it cannot be treated as a DISC for its first taxable year.

Taxpayer has requested a ruling that grants the following:

- (1) an extension of time to file a Form 4876-A within 60 days from the date such ruling is issued so that it will be treated as a DISC for its first taxable year; and
- (2) permission to withdraw the protective Form 4876-A it filed for its taxable year beginning Date 3 if it receives a favorable ruling granting an extension of time to file Form 4876-A for its first taxable year.

LAW AND ANALYSIS

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the

Secretary may give his consent to the making of an election at such other times as he may designate.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing DISC status must file Form 4876-A. A corporation electing to be treated as a DISC for its first taxable year shall make its election within 90 days after the beginning of that year. The rules contained in Treas. Reg. § 1.992-2(a)(1) and (b)(1) and (3) shall apply to the manner of making the election and the manner and form of representing shareholder consent to the election.

Treas. Reg. § 1.992-2(a)(1)(i) provides, in part, that the election to be treated as a DISC shall be valid only if the consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is effective is on or attached to the Form 4876-A when filed with the service center.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interest of the Government.

Taxpayer requests an extension of time to make a timely election described in Temp. Treas. Reg. § 1.921-1T(b)(1) for its first taxable year. This election is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant

Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3.

Based on the facts and information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file the election and shareholder consent statement required under Temp. Treas. Reg. § 1.921-1T(b)(1) and Treas. Reg. § 1.992-2(a)(1)(i). In addition, we believe that, if Taxpayer makes a later-executed election in accordance with this ruling that is effective on Date 1, Taxpayer's earlier-executed (but later-effective) protective election must properly be viewed either as having never been legally effective in the first place or as redundant. Under either view, Taxpayer need not withdraw its protective election.¹

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election, to submit a shareholder consent statement, or to claim DISC status or benefits. See Treas. Reg. § 301.9100-1(a). A copy of this letter ruling should be filed with the Form 4876-A and shareholder consent statements.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that written determinations may not be used or cited as precedent. Except as expressly provided herein, this ruling neither expresses nor implies any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this ruling letter.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representatives.

Sincerely,

Christopher J. Bello
Chief, Branch 6
Office of Associate Chief Counsel
(International)

¹ Taxpayer provided no precedential authority for the proposition that taxpayers may withdraw DISC elections in a manner other than the revocation procedures set forth in Treas. Reg. § 1.992-2(e). We provide no opinion whether taxpayers may withdraw DISC elections in the manner requested by Taxpayer.